

In adopting the R&R, this court agreed with the determination of the Magistrate Judge that, although petitioner is presently incarcerated, he is not “in custody” on a sentence related to the

1992 convictions and is, therefore, ineligible for *habeas corpus* relief with respect to those cases.  
See 28 U.S.C.A. § 2254 (a).

Via the order dated February 20, 2018, Petitioner was notified of his appellate rights pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure. Neither the Order nor the R&R addressed the appealability of this matter. Section 2253(c)(1)(A) of the United States Code provides that an appeal may not be taken from a final order in a *habeas* proceeding in which the detention complained of arises out of process issued by a state court unless a certificate of appealability has been issued. A certificate of appealability should be issued **only** when a petitioner has made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Because petitioner has not made such a showing, a certificate of appealability is denied. An appropriate order follows.

March 19, 2018

/s JOY FLOWERS CONTI  
Joy Flowers Conti  
Chief United States District Judge